Supreme Court, U.S.
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No.

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

SHOSHONE INDIAN TRIBE OF THE WIND RIVER RESERVATION AND THE ARAPAHO INDIAN TRIBE OF THE WIND RIVER RESERVATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether provisions contained in appropriations Acts for the Department of Interior since 1990 have the effect of reviving claims that (a) had already expired under the applicable statute of limitations before the passage of the first such appropriations law, or (b) alleged a failure by the government to bring revenues into the relevant tribal trust accounts.

2. Whether the respondent Tribes can recover prejudgment interest on funds that the United States ought to have collected on their behalf but that were not deposited into tribal trust accounts.

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PETITION FOR A WRIT OF CERTIORARI

The Acting Solicitor General, on behalf of the United States of America, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. 1a-32a) is reported at 364 F.3d 1339. The opinion of the Court of Federal Claims (CFC) addressing the statute of limitations issue (App. 33a-54a) is reported at 51 Fed. Cl. 60. The opinion of the CFC addressing the prejudgment interest issue (App. 55a-60a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 2004. Petitions for rehearing were denied on August 26, 2004 (App. 72a-75a). On November 12, 2004, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including December 24, 2004. On

December 14, 2004, the Chief Justice further extended the time to file to and including January 7, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 2501 of Title 28, United States Code, provides in pertinent part that "[e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues." 28 U.S.C. 2501.

2. Section 2516(a) of Title 28, United States Code, provides: "Interest on a claim against the United States shall be allowed in a judgment of the United States Court of Federal Claims only under a contract or Act of Congress expressly providing for payment thereof." 28 U.S.C. 2516(a).

3. Every Department of Interior (DOI) appropriations law since 1990 has contained a provision substantially similar to the following:

> That notwithstanding any other provision of law, the statute of limitations shall not commence to run on any claim, including any claim in litigation pending on the date of the enactment of this Act, concerning losses to or mismanagement of trust funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds from which the beneficiary can determine whether there has been a loss.

Act of Nov. 10, 2003, Pub. L. No. 108-108, Tit. I, 117 Stat. 1263.[1]

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[1] See Act of Nov. 5, 1990, Pub. L. No. 101-512, Tit. I, 104 Stat. 1930; Act of Nov. 13, 1991, Pub. L. No. 102-154, Tit. I, 105 Stat. 1004; Act of Oct. 5, 1992, Pub. L. No. 102-381, Tit. I, 106 Stat. 1389; Act of Nov. 11, 1993, Pub. L. No. 103-138, Tit. I, 107 Stat. 1391; Act of Sept. 30, 1994, Pub. L. No. 103-332, Tit. I, 108 Stat. 2511; Act of Apr. 26, 1996, Pub. L. No. 104-134, Tit. I, 110 Stat. 1321-175; Act of Sept. 30, 1996, Pub. L. No. 104-208, Tit. I, 110 Stat. 3009-197 to 3009-198; Act of Nov. 14, 1997, Pub. L. No. 105-

4. Section 612 of Title 25, United States Code, provides as follows:

> The Secretary of the Treasury, upon request of the Secretary of the Interior, is authorized and directed to establish a trust fund account for each tribe and shall make such transfer of funds on the books of his department as may be necessary to effect the purpose of section 611 of this title: *Provided*, That interest shall accrue on the principal fund only, at the rate of 4 per centum per annum, and shall be credited to the interest trust fund accounts established by this section: *Provided further*, That all future revenues and receipts derived from the Wind River Reservation under any and all laws, and the proceeds from any judgment for money against the United States hereafter paid jointly to the Shoshone and Arapahoe Tribes of the Wind River Reservation, shall be divided in accordance with section 611 of this title and credited to the principal trust fund accounts established herein; and the proceeds from any judgment for money against the United States hereafter paid to either of the tribes singly shall be credited to the appropriate principal trust fund account.

25 U.S.C. 612.

STATEMENT

1. The Shoshone Indian Tribe of the Wind River Reservation and the Arapaho Indian Tribe of the Wind River Reservation (the Tribes), respondents in this Court, share an undivided interest in the Wind River Indian Reservation in Wyoming. App. 34a. That undivided interest includes min-

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83, Tit. I, 111 Stat. 1559; Act of Nov. 29, 1999, Pub. L. No. 106-113, App. C, Tit. I, 113 Stat. 1501A-153; Act of Oct. 11, 2000, Pub. L. No. 106-291, Tit. I, 114 Stat. 939; Act of Nov. 5, 2001, Pub. L. No. 107-63, Tit. I, 115 Stat. 435; Act of Feb. 20, 2003, Pub. L. No. 108-7, Div. F, Tit. I, 117 Stat. 236; Act of Nov. 10, 2003, Pub. L. No. 108-108, Tit. I, 117 Stat. 1263.

eral and other resources such as oil, gas, sand, and gravel located on the Reservation. See *id.* at 35a. On October 10, 1979, the Tribes filed separate complaints in the Court of Federal Claims (CFC), alleging that the United States had breached its trust responsibilities by (1) mismanaging the natural resources on the Reservation, thereby failing to generate adequate revenues for the Tribes; and (2) mishandling tribal funds after collection. See *id.* at 33a-34a. The Tribes sought damages for all such breaches of trust occurring since August 14, 1946. See C.A. App. 69, 82; App. 5a, 35a.

2. The separate actions filed by the two Tribes were consolidated by the CFC. The court divided the case into four "phases," the first of which involved the Tribes' claims relating to sand and gravel resources. App. 35a. The parties filed pretrial motions addressing legal issues that would affect the scope of the anticipated trial on those claims. This petition for a writ of certiorari concerns the resolution by the CFC, and subsequently by the court of appeals, of two such issues.

a. In a ruling issued November 30, 2001, the CFC addressed the impact of recent appropriations Acts (see p. 2 & note 1, *supra*) on the Tribes' ability to pursue their claims. App. 33a-54a. Those Acts have provided since 1990 that the applicable limitations period "shall not commence to run on any claim * * * concerning losses to or mismanagement of trust funds, until the affected tribe or individual Indian has been furnished with an accounting of such funds."[2] The CFC

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[2] The American Indian Trust Fund Management Reform Act of 1994, Pub. L. No. 103-412, 108 Stat. 4239, requires the Secretary of the Interior to "account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to section 162a of [Title 25]." 25 U.S.C. 4011(a); see *Cobell* v. *Norton*, 240 F.3d 1081, 1102-1104 (D.C. Cir. 2001). It is undisputed for present purposes that the respondent Tribes

identified two disputed issues concerning the proper interpretation of those Acts: "[1] whether the Acts preserve claims time-barred before the passage of the first of [the] Acts and, if so, [2] whether the Acts preserve only claims related to money already received by [the government] or also preserve claims for monies that should have been received by the trust but were not received because of mismanagement of the Tribes' resources." App. 38a.

The CFC resolved both those questions in the Tribes' favor. The court found that the appropriations Acts eliminated any potential barrier to the Tribes' claims, regardless of when those claims accrued, because the Tribes had not previously received an accounting. App. 47a-51a. The CFC also held that "the Acts cover claims both for monies received in trust by [the government] and thereafter mismanaged and to * * * monies that should have been received by the trust but were not received because of mismanagement of the Tribes' mineral and other assets." *Id.* at 51a.

b. In a subsequent order (App. 55a-60a), the CFC held that the Tribes would not be entitled to prejudgment interest on any funds that ought to have been deposited in tribal trust accounts but were not in fact deposited. See *id.* at 56a-58a. The court was "unpersuaded" that 25 U.S.C. 612, which establishes trust accounts in the Treasury for the respondent Tribes and provides for the payment of interest at the rate of 4% on amounts deposited in those accounts, "provides the necessary 'hook' which would remove this case from the general prohibition against awarding prejudgment interest against the United States." App. 57a. The court noted that Section 612 "specifically refers to the accrual of interest on

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have not yet received an "accounting," within the meaning of the relevant appropriations Acts, with respect to the sand and gravel revenues at issue in this appeal.

'proceeds from any judgment,' thus expressly contemplating postjudgment interest but not prejudgment interest." *Ibid.*

The CFC further concluded that this Court's decision in *Peoria Tribe of Indians* v. *United States*, 390 U.S. 468 (1968), did not support the Tribes' claim to prejudgment interest. App. 57a-58a. The court found that, "[i]n contrast to the legislation involved in *Peoria*, Section 612 focuses on the entitlement to interest *after* receipt of money." *Id.* at 57a. The CFC explained that "Section 612 does not state, as the legislation involved in *Peoria* [did], that the United States shall sell land and then invest, nor does it appear to impose such a responsibility by any similar phrasing." *Id.* at 58a.

3. After the CFC entered those orders, the parties entered into a settlement of the sand and gravel claims. See App. 65a-71a. Under the terms of the settlement agreement, the United States agreed to pay the Tribes a total of $2.75 million, and the parties reserved their rights to appeal the rulings described above. See *id.* at 68a-69a. The United States further agreed to pay the Tribes an additional $50,000 if the statute of limitations issue is finally resolved in the Tribes' favor, and to pay the Tribes an additional $500,000 if the Tribes prevail on their appeal of the CFC's prejudgment interest ruling. *Id.* at 69a. The CFC approved the settlement and entered judgment on the Tribes' sand and gravel claims. *Id.* at 61a-64a.

4. The Court of Appeals for the Federal Circuit affirmed in part, reversed in part, and remanded. App. 1a-32a.

a. The court of appeals held that the relevant appropriations Acts categorically eliminate any statute-of-limitations barrier to the Tribes' assertion of claims falling within the Acts' coverage. The court placed primary reliance on the phrases "[n]otwithstanding any other provision of law" and "shall not commence to run," which have appeared in each of the appropriations Acts. App. 12a. The court found that "[t]he introductory phrase '[n]otwithstanding any other pro-

vision of law' connotes a legislative intent to displace any other provision of law that is contrary to the Act, including 28 U.S.C. § 2501." *Ibid.* The court then stated that "[t]he next important phrase of the Act, 'shall not commence to run,' unambiguously delays the commencement of the limitations period until an accounting has been completed that reveals whether a loss has been suffered." *Ibid.* The court of appeals rejected the government's contention that the relevant appropriations Act language is a tolling provision that applies only to claims that remained live at the time that the first of the Acts was enacted or that accrued after that date. The court noted that "most statutes use the word 'toll' when the purpose of the statute is to interrupt the statute of limitations," and it construed Congress's failure to use the word "toll" in the appropriations laws to reflect a different intent. *Ibid.*

The court of appeals also concluded that its interpretation of the relevant appropriations laws would "comport[] with fundamental trust law principles." App. 14a. The court observed that "[b]eneficiaries of a trust are permitted to rely on the good faith and expertise of their trustees; because of this reliance, beneficiaries are under a lesser duty to discover malfeasance relating to their trust assets." *Ibid.* In recognition of that reliance interest, the court stated, it is "common for the statute of limitations to not commence to run against the beneficiaries until a final accounting has occurred that establishes the deficit of the trust." *Id.* at 15a (citations omitted).

With respect to the range of potential claims that the appropriations Acts would have the effect of preserving, the court of appeals adopted a position between those taken by the parties. See App. 16a-21a. Relying on this Court's interpretation of the Indian Mineral Leasing Act of 1938 (IMLA), ch. 198, 52 Stat. 347, 25 U.S.C. 396a *et seq.*, in *United States* v. *Navajo Nation*, 537 U.S. 488 (2003), the

court rejected the Tribes' contention that the appropriations Acts preserved claims based on the government's alleged failure to negotiate adequate prices for sand and gravel leases. App. 18a-19a. The court held, however, that *Navajo Nation* "does not foreclose liability for failing to manage or collect the *proceeds* from the approved mining contracts in violation of the trust responsibilities owed under the implementing regulations of the IMLA." *Id.* at 20a. The court concluded that the relevant appropriations laws "cover[] any claims that allege the Government mismanaged funds after they were collected, as well as any claims that allege the Government failed to timely collect amounts due and owing to the Tribes under its sand and gravel contracts." *Id.* at 21a.

b. The court of appeals also held that the Tribes were entitled to prejudgment interest on funds that should have been brought into the trust accounts in the Treasury but that were not collected, or that were collected in an unreasonably delayed fashion, as a result of the government's mismanagement. App. 21a-29a. The court stated that, "[b]ecause the Government was obligated under 25 U.S.C. § 612 to both credit the principal account with *all* future revenues and receipts and to accrue interest at the stated rate," Section 612 should be construed "to permit recovery for interest on revenues and receipts that the Government failed to collect or delayed in collecting under the Tribes' sand and gravel contracts." *Id.* at 23a. The court relied in part on this Court's decision in *Peoria Tribe*, which held that the government was required to pay interest on money that would have been brought into a tribal trust if the government had properly performed its treaty responsibilities in selling tribal land. *Id.* at 25a-26a.

c. Judge Rader dissented on the issue of prejudgment interest. App. 30a-32a. Judge Rader explained that, "[a]s a general proposition, 28 U.S.C. § 2516 relieves the United

States of any liability for prejudgment interest, except where Congress has expressly authorized that payment." *Id.* at 30a. Judge Rader would have held that 25 U.S.C. 612 does not provide clear authorization for a prejudgment interest award because Section 612 "makes the United States responsible only for interest on funds actually collected and deposited in the trust account" and "does not obligate interest on funds that the United States should have collected or should have deposited." App. 30a. Judge Rader found *Peoria Tribe* to be distinguishable because that case involved the breach by the United States of a "very specific" treaty obligation (the duty to sell tribal lands at public auction rather than by private sale), while the Tribes in this case have simply alleged "negligence in general administration of a trust." *Id.* at 32a.

REASONS FOR GRANTING THE PETITION

The Federal Circuit's decision in this case is seriously flawed. If allowed to stand, it will revive long-moribund claims and substantially increase the potential liability and litigation burdens of the United States associated with damages actions alleging mismanagement of Indian trust assets or accounts. Although the amounts of money that remain at issue in this petition are relatively modest, eight such lawsuits brought by Indian Tribes, alleging total damages of more than $3 billion, are already pending before the Court of Federal Claims.[3] Other Tribes are likely to file similar actions. Many additional suits could be generated by

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[3] See *Chippewa Cree Tribe of the Rocky Boy's Reservation* v. *United States*, No. 92-cv-00675; *Confederated Tribes of the Warm Springs Reservation of Or.* v. *United States*, No. 02-cv-00126; *Delaware Tribe of Indians* v. *United States*, No. 02-cv-00026; *Jicarilla Apache Nation* v. *United States*, No. 02-cv-00025; *Osage Nation* v. *United States*, No. 00-cv-00169; *Pueblo of Laguna* v. *United States*, No. 02-cv-00024; *Osage Nation* v. *United States*, No. 99-00550; and *Wolfchild* v. *United States*, No. 03-cv-2684.

the scores of thousands of individual Indians for whom the United States held funds in trust prior to 1984.[4]

Both the number and the potential dollar value of possible breach-of-trust claims against the United States are enormous. As a recent DOI report explained, in fiscal year 2003, DOI collected revenues from leasing, use permits, sales, and interest of approximately $195 million for 240,000 individual Indian money (IIM) accounts, and approximately $375 million for 1,400 tribal accounts. DOI also manages approximately $2.9 billion in tribal funds and $400 million in

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[4] The potential impact of the decision below is suggested by the number of suits that have been brought in district court by Tribes or individual Indians seeking an accounting of trust accounts. See *Cobell* v. *Norton*, No. 96-cv-1285 (D.D.C.); *Santee Sioux Tribe of Neb.* v. *Norton*, No. 03-cv-01602 (D.D.C.); *Shoshone-Bannock Tribes of Fort Hall Indian Reservation* v. *Norton*, No. 02-cv-00254 (D.D.C.); *Standing Rock Sioux Tribe* v. *Norton*, No. 02-cv-00040 (D.D.C.); *Three Affiliated Tribes of the Fort Berthold Reservation* v. *Norton*, No. 02-cv-00253 (D.D.C.); *Western Shoshone National Council* v. *United States*, No. 03-cv-02009 (D.D.C.); *Crow Tribe of Indians* v. *Norton*, No. 02-cv-00284 (D.D.C.); *Oglala Sioux Tribe* v. *Norton*, No. 04-cv-01126 (D.D.C.); *Omaha Tribe of Neb.* v. *Norton*, No. 04-cv-00901 (D.D.C.); *Osage Tribe of Indians of Okla.* v. *United States*, No. 04-cv-00283 (D.D.C.); *Chippewa Cree Tribe of the Rocky Boy's Reservation* v. *Norton*, No. 02-cv-00276 (D.D.C.) *Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation* v. *Norton*, No. 02-cv-00035 (D.D.C.); *Confederated Tribes of the Warm Springs Reservation of Or.* v. *Norton*, No. 02-cv-02040 (D.D.C.); *Crow Creek Sioux Tribe* v. *Norton*, No. 04-cv-00900 (D.D.C.); *Yankton Sioux Tribe* v. *Norton*, No. 03-cv-01603 (D.D.C.). Although those suits do not involve claims for monetary relief, the plaintiffs in those actions may seek in the future to recover damages in the CFC. In *Cobell* v. *Norton*, No. 96-cv-1285 (D.D.C.), the court of appeals held that the Department of the Interior had unreasonably delayed in the performance of its accounting of individual Indian trust accounts under the American Indian Trust Fund Management Reform Act of 1994, Pub. L. No. 103-412, 108 Stat. 4239, discussed at pp. 21-22, *infra*. See *Cobell* v. *Norton*, 240 F.3d 1081, 1104-1106 (D.C. Cir. 2001). The plaintiffs in that case are currently asking the district court to adjust account balances and are asserting an entitlement to accrued interest.

individual Indian funds. DOI, *Strengthening the Circle: Interior Indian Affairs Highlights 2001-2004*, at 10 (2004). And because the Federal Circuit has exclusive jurisdiction over appeals in cases involving damages claims against the United States, all such actions will be controlled by the Federal Circuit's rulings in this case.

If suits alleging breach of the government's trust obligations—in this case, for claims arising out of events dating back to 1946—may proceed without regard to the otherwise-applicable statute of limitations, both the potential dollar amounts of any recoveries that the plaintiffs may ultimately obtain, and the burden and expense of locating, assembling, and assessing the evidence necessary to resolve the claims of trust mismanagement, will be greatly increased. The availability of prejudgment interest on damages resulting from mismanagement of trust assets would likewise substantially increase the government's potential exposure in any given suit, and it would also increase the volume of trust litigation by inducing plaintiffs to sue even when their damages are small. Indeed, the court of appeals' ruling on prejudgment interest exacerbates the practical difficulties threatened by the court's construction of the appropriations Acts, since the availability of interest creates a particular incentive for plaintiffs to pursue claims that arose in the distant past. This Court's review is warranted to prevent those highly disruptive consequences.[5]

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[5] The Tribes have filed a petition for a writ of certiorari seeking review of the court of appeals' decision insofar as it holds that the appropriations Acts do not extend the statute of limitations for claims based on mismanagement of trust resources, except for alleged failures to collect payments under existing contacts, to deposit collected monies into interest-bearing accounts, or to assess penalties against lessees for late payments. See *Eastern Shoshone Tribe of the Wind River Reservation, et al.* v. *United States*, petition for cert. pending, No. 04-731 (filed Nov. 24, 2004).

I. THIS COURT SHOULD GRANT REVIEW OF THE COURT OF APPEALS' DECISION TO REVIVE MORIBUND CLAIMS, INCLUDING CLAIMS ALLEGING FAILURE TO COLLECT REVENUES FROM THE TRIBES' NATURAL RESOURCES

In two distinct respects, the court of appeals gave unduly broad effect to the recent appropriations Acts. First, the court's construction of the Acts would have the effect of reviving claims for which the applicable limitations period had already expired when the first of the Acts was passed. Second, the court interpreted the statutory phrase "losses to or mismanagement of trust funds" to encompass situations in which the government is alleged to have breached its obligations not by dissipating or otherwise "losing" money on deposit in a trust account, but by failing to bring money into the account in the first instance. Those holdings are erroneous.

A. As a general rule, any claim within the jurisdiction of the CFC "shall be barred unless the petition thereon is filed within six years after such claim first accrues." 28 U.S.C. 2501. Although the Tribes filed suit in this case on October 10, 1979, they sought damages not only for claims accruing on or after October 10, 1973, but for all breaches of trust that may have occurred since August 14, 1946. See p. 4, *supra*; 28 U.S.C. 1505 (CFC has jurisdiction over claims by Tribes against the United States "accruing after August 13, 1946"); App. 5a. Although some of those claims became time-barred as early as 1952, the court of appeals held that all claims "concerning losses to or mismanagement of trust funds" (as the court understood that phrase, see pp. 20-23, *infra*) could go forward, without regard to the length of time that had passed between the accrual of the claim and the filing of suit. The effect of the court's decision is to revive claims against the government that had long ago expired through lapse of time before the first of the appropriations Acts was passed

—even if the alleged breach of trust occurred as early as 1946, and even if the tribal plaintiff was or should have been aware of the nature of the alleged breach at the time that it occurred. Nothing in the text or history of the Acts suggests that Congress intended that extraordinary result.

1. Applicable canons of statutory interpretation make clear that the relevant appropriations laws could properly be construed to revive lapsed claims only if the language of the Acts unambiguously compels that result. As a general rule, "[s]ubsequent extensions of a limitations period will not revive barred claims in the absence of a clear expression of contrary legislative intent." *Resolution Trust Corp.* v. *Seale*, 13 F.3d 850, 853 (5th Cir. 1994). See *Hughes Aircraft Co.* v. *United States ex rel. Schumer*, 520 U.S. 939, 950 (1997) ("[E]xtending a statute of limitations after the pre-existing period of limitations has expired impermissibly revives a moribund cause of action."); *Chenault* v. *United States Postal Serv.*, 37 F.3d 535, 539 (9th Cir. 1994) ("[A] newly enacted statute that lengthens the applicable statute of limitations may not be applied retroactively to revive a plaintiff's claim that was otherwise barred under the old statutory scheme."), quoted in *Hughes Aircraft*, 520 U.S. at 950; *Village of Bellwood* v. *Dwivedi*, 895 F.2d 1521, 1527 (7th Cir. 1990) (new statute extending a limitations period "presumptively would not apply to a claim that became barred under the old law before the new one was enacted") (quoting *United States* v. *Kimberlin*, 776 F.2d 1344, 1347 (7th Cir. 1985), cert. denied, 476 U.S. 1142 (1986)). Cf. *Stogner* v. *California*, 539 U.S. 607 (2003) (statute that revives time-barred criminal cause of action violates Ex Post Facto Clause).[6]

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[6] As a constitutional matter, this Court's decisions recognize that a statute of limitations in a civil case "can be extended, without violating the Due Process Clause, after the cause of the action arose and even after the statute itself has expired." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211,

In the instant case, that rule of construction is reinforced by firmly established principles of sovereign immunity. "[T]he United States, as sovereign, is immune from suit save as it consents to be sued," *United States* v. *Testan*, 424 U.S. 392, 399 (1976) (citation and internal quotation marks omitted), and waivers of sovereign immunity "cannot be implied but must be unequivocally expressed," *United States* v. *King*, 395 U.S. 1, 4 (1969). When a plaintiff's right to sue the United States is made subject to a statute of limitations, "the limitations provision constitutes a condition on the waiver of sovereign immunity." *Block* v. *North Dakota*, 461 U.S. 273, 287 (1983); see *United States* v. *Mottaz*, 476 U.S. 834, 841 (1986); cf. *Raygor* v. *Regents of Univ. of Minn.*, 534 U.S. 533, 543-544 (2002) (similar for suits against a State). Because "the Government's consent to be sued must be construed strictly in favor of the sovereign, and not enlarged beyond what the language requires," *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 34 (1992) (citations, brackets, ellipses, and internal quotation marks omitted), any ambiguity in the relevant appropriations Acts must be resolved in a manner that avoids subjecting the government to previously lapsed claims.

The relationship between Indian Tribes and the United States provides no basis for declining to apply the canons of construction described above. Even in cases involving Indian plaintiffs, statutory waivers of the government's sovereign immunity must be narrowly construed, and the court's jurisdiction must be limited to that which Congress clearly intended. See, *e.g.*, *Mottaz*, 476 U.S. at 851 ("[E]ven for Indian plaintiffs, a waiver of sovereign immunity cannot

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229 (1995); see, *e.g.*, *Chase Sec. Corp.* v. *Donaldson*, 325 U.S. 304, 315-316 (1945). The existence of congressional *power* to revive lapsed claims, however, does not vitiate the rule of construction that requires a clear statement of congressional intent to accomplish that result. Compare *Landgraf* v. *USI Film Products*, 511 U.S. 244, 267-268 (1994).

be lightly implied but must be unequivocally expressed.") (brackets and internal quotation marks omitted); *Klamath & Moadoc Tribes* v. *United States*, 296 U.S. 244, 250 (1935) ("The Act grants a special privilege to plaintiffs and is to be strictly construed and may not by implication be extended to cases not plainly within its terms."); *Blackfeather* v. *United States*, 190 U.S. 368, 376 (1903) ("As these statutes extend the jurisdiction of the Court of Claims and permit the Government to be sued for causes of action therein referred to, the grant of jurisdiction must be shown clearly to cover the case before us, and if it do[es] not, it will not be implied.").

2. The appropriations Acts do not provide the requisite clear statement of congressional intent to revive stale claims. In holding that the "plain language" of the Acts supported the Tribes' position, the court of appeals stated that "[t]he operative language of the Act[s] is the combination of the phrases '[n]otwithstanding any other provision of law' and the directive that the statute of limitations 'shall not commence to run' on any claim until an accounting is provided." App. 11a-12a. Those phrases do not support the Tribes' position.

The phrase "[n]otwithstanding any other provision of law" simply makes clear that, if a particular claim is timely under the terms of the appropriations Acts, no limitations period contained in another federal law can provide a basis for dismissal. For example, if a Tribe brings suit in the year 2000 to assert a claim of trust funds mismanagement that accrued in 1992, its action would be timely in part because of the "notwithstanding" language. That language would make clear that the appropriations Acts, which have been in effect since 1990 and would prevent the limitations period on a claim of that nature from "commenc[ing] to run," trump the general rule set forth in 28 U.S.C. 2501 that a claim in the CFC is barred unless suit is filed "within six years after such claim first accrues." But while the phrase "[n]otwithstand-

ing any other provision of law" makes clear that other statutes cannot limit the effect of the appropriations Acts, that phrase has no bearing on the question of *what* effect Congress intended the appropriations Acts to have.

The relevant inquiry thus centers on the statutory phrase "shall not commence to run"; and that language does not support the Tribes' position. Because the phrase addresses the question of when the limitations period *begins* to run, it has no logical application to limitations periods that not only had begun to run, but had *already expired*, before the first of the appropriations laws was enacted. Rather, the pertinent appropriations Act language is best construed as a tolling provision that preserves causes of action that were not yet time-barred as of the passage of the first appropriations provision (*i.e.*, claims that first accrued on or after November 5, 1984). See note 1, *supra*. The Acts prevent the statute of limitations from running during the specified period (*i.e.*, between the passage of the first of the Acts and DOI's provision of an accounting), but they do not purport to revive a moribund claim and *undo* the effect of a plaintiff's *prior* failure to assert its rights within the time specified by Congress in 28 U.S.C. 2501.[7]

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[7] Viewed in isolation, the phrase "shall not commence to run" suggests that the Acts' tolling effect is limited to claims that accrued after the enactment in 1990 of the first of the appropriations provisions. On that reading, a claim that accrued in (*e.g.*) 1988 would be unaffected by the Acts (because the limitations period on such a claim would have already "commence[d] to run"), and the time for filing suit would expire in 1994. Since 1993, however, the annual appropriations provisions have all been made applicable to "any claim in litigation pending on the date of" the enactment of the relevant appropriations law. See App. 7a n.2. That language suggests that the Acts' tolling effect extends to filed claims that were not time-barred when filed. No similar contextual evidence suggests, however, that the Acts are intended to revive claims that were already time-barred when the Acts were passed. And, while the government's reading of the appropriations Acts accords operative significance to the more

The court of appeals' reliance (App. 11a) on the supposed "plain language" of the appropriations Acts is flawed in another, related respect as well.[8] Emphasis on the fact that revived claims fall within the "plain terms" of a new limitations rule fails to give full effect to the requirement of a clear statement of legislative intent to revive moribund claims. Cf. *Hughes Aircraft*, 520 U.S. at 950. Decisions holding that new limitations periods are presumptively inapplicable to expired claims *typically* involve statutory amendments that, *if* applicable to the disputes before the courts, would treat the plaintiffs' claims as timely. See, *e.g.*, *Seale*, 13 F.3d at 851-853 (suit filed within the new period specified by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, 103 Stat. 183, should be dismissed as untimely because the plaintiff's claims had expired under state limitations rules before FIRREA was enacted, and the FIRREA limitations period applies only to claims that remained live on FIRREA's effective date). The text of the relevant appropriations Acts thus provides no basis for rejecting the usual presumption that new limitations provisions will not be construed to revive lapsed claims, both because the phrase "shall not commence to run" has no obvious application to claims that have already expired, and because the Acts do not expressly provide for the revival of moribund claims.[9]

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recent statutes' references to pending litigation (since those references can serve to dispel the otherwise-permissible reading that the riders apply only to claims that accrued after the first rider was enacted), those statutory references would be wholly superfluous under respondents' construction of the Acts.

[8] Indeed, as noted, see n.7, *supra*, the "plain language" reading of the Acts would render them applicable only prospectively to claims on which the limitations period had not yet begun to run.

[9] In contrast to the court of appeals in this case, the district court in *Cobell* v. *Babbitt*, 30 F. Supp. 2d 24, 44 (D.D.C. 1998), held that the relevant appropriations provisions toll the statute of limitations for live claims

3. The court of appeals also believed that its construction of the appropriations Acts "comport[ed] with fundamental trust law principles." App. 14a. The court based that statement on its understanding that the statute of limitations on a breach-of-trust claim commonly begins to run only when "a final accounting has occurred that establishes the deficit of the trust." *Id.* at 15a. If the provision of an accounting were an invariable prerequisite to the commencement of the limitations period in breach-of-trust cases, the appropriations provisions at issue here would not have the effect of reviving lapsed claims, but would simply codify the common-law accrual rule. In fact, however, the court of appeals' analysis reflects a serious misunderstanding—or at least a substantial oversimplification—of background common-law principles governing the commencement of limitations periods on claims for breach of trust.

This Court has frequently found breach-of-trust claims to be time-barred, even in the absence of a formal accounting, when the conduct constituting the alleged breach had been known to the plaintiff long before suit was filed. See *Philippi* v. *Philippe*, 115 U.S. 151, 156-157 (1885); *Speidel* v. *Henrici*, 120 U.S. 377, 386 (1887); *Benedict* v. *City of New York*, 250 U.S. 321, 327 (1919). The Federal Circuit has held more generally that a breach-of-trust claim brought by a Tribe or individual Indian against the United States "first accrues" within the meaning of 28 U.S.C. 2501 "when all the events which fix the government's alleged liability have

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but do *not* revive claims that had previously expired. The court explained that, "[a]bsent some clear, contrary expression of congressional intent that would lead to the conclusion that Congress meant to revive stale claims, the plaintiffs' interpretation of the tolling language * * * must be rejected." *Id.* at 44 (citing *Seale*). The court found nothing in the text or history of the appropriations Acts that would suggest an intent to revive claims that had become time-barred before the first of the Acts was passed. *Ibid.*

occurred and the plaintiff was or should have been aware of their existence." *Hopland Band of Pomo Indians* v. *United States*, 855 F.2d 1573, 1577 (Fed. Cir. 1988); accord *Jones* v. *United States*, 801 F.2d 1334, 1335 (Fed. Cir. 1986) ("Generally, an action for breach of fiduciary duty accrues when the trust beneficiary knew or should have known of the breach."), cert. denied, 481 U.S. 1013 (1987); *Brown* v. *United States*, 195 F.3d 1334, 1337-1338 (Fed. Cir. 1999); *Menominee Tribe* v. *United States*, 726 F.2d 718, 721 (Fed. Cir.), cert. denied, 469 U.S. 826 (1984).

Cases could arise in which the beneficiary is not placed on notice of an alleged breach of trust, and the statute of limitations on his claim does not begin to run, until the trustee has provided an accounting that furnishes the beneficiary with sufficient information to constitute the requisite notice. In many circumstances, however, the statute of limitations will commence because the trust has terminated or the beneficiary has alternative means of acquiring actual or constructive knowledge of the trustee's allegedly wrongful conduct, even in the absence of an accounting. Thus, at least in a great number of the cases to which the Federal Circuit's reading of the appropriations Acts will apply, the effect of the court's decision will be to revive breach-of-trust claims that had previously accrued and expired under generally applicable limitations principles.[10]

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[10] The only case cited by the court of appeals in support of the proposition that an accounting is commonly required in order to trigger the limitations period in a breach-of-trust case was *McDonald* v. *First National Bank*, 968 F. Supp. 9, 14 (D. Mass. 1997). See App. 15a. The Federal Circuit's reliance on *McDonald* was misplaced. The district court in *McDonald* did not treat an accounting as an essential prerequisite to the accrual of a breach-of-trust cause of action, but simply held that the statute of limitations had not run in that case because the plaintiffs had not received "accountings *or other information* that would have alerted them to the trustees' alleged mismanagement of the trusts' assets." 968 F. Supp. at 14 (emphasis added).

B. The court of appeals compounded its error by giving an unduly broad reading to the phrase "losses to or mismanagement of trust funds." The court did not appear to dispute the government's contention (see App. 17a) that "mismanagement of trust funds" can occur only when the government mishandles money that has actually been taken into the trust. The court construed the phrase "losses to * * * trust funds," however, to encompass instances in which the United States wrongfully failed to collect and deposit money owed to the Tribes under existing mineral leases. See *id.* at 20a. That holding is inconsistent with the text and purposes of the relevant appropriations provisions.

1. Various provisions of Title 25 refer to tribal "trust funds" and require that "funds" held in trust for Tribes or individual Indians be deposited in specified accounts in the United States Treasury or invested in public debt securities. See, *e.g.*, 25 U.S.C. 161, 162a, 611, 612. Those provisions can be sensibly applied only if the term "funds" is understood, in accordance with its usual meaning, as limited to *monetary* assets. The term "funds" in the relevant appropriations Acts therefore cannot be construed to include the tribal sand and gravel resources that the government is alleged to have mismanaged.

2. The government's failure to collect and deposit monies owed under the Tribes' mineral leases is not properly regarded as a "loss[]" to the tribal trust accounts in the United States Treasury or the monies located in those accounts. In ordinary parlance, a "trust fund" can sustain a "loss" only with respect to money that is first contained in the fund and then is dissipated, not with respect to money that was never paid into the trust in the first place but that allegedly would have been obtained if income-generating activities had been conducted in a more productive or prudent fashion. And, to the extent that the term "losses" in the appropriations Acts is ambiguous, that ambiguity must be resolved in the gov-

ernment's favor in accordance with the interpretive principles set forth at pp. 14-15, *supra*.

3. Construing the phrase "losses to * * * trust funds" to encompass the government's failure to derive revenue from the natural resources of a Tribe or individual Indian would not further the purpose of the relevant appropriations provisions. The Acts by their terms delay the running of the statute of limitations "until the affected tribe or individual Indian has been furnished with an accounting *of such funds*." Deferral of the statute of limitations until an accounting has been provided makes sense, however, only with respect to the sorts of claims as to which the accounting is intended to furnish information bearing on the proper disposition of the suit—*i.e.*, claims challenging the management of the trust funds themselves.

This focus on the trust funds is reinforced by the American Indian Trust Fund Management Reform Act of 1994 which refers only to an accounting of *money* held in distinct trusts in the Treasury or otherwise deposited or invested in a manner specified by law, not an accounting of the land or minerals that are separately held in trust by the United States for Tribes or individual Indians. See 25 U.S.C. 4011(a) ("The Secretary shall account for the daily and annual balance of all funds held in trust by the United States for the benefit of an Indian tribe or an individual Indian which are deposited or invested pursuant to section 162a of [Title 25]."). A straightforward reading of that language requires an accounting only of the sums *actually* paid into the relevant trust accounts. See also *Cobell* v. *Norton*, 240 F.3d 1084, 1102-1104 (D.C. Cir. 2001). The government need not attempt to determine what additional monies the accounts *would have* received if *other* assets, separately held in trust by the United States, had been managed in a more

productive fashion.[11] Because the accounting was not intended to determine whether the Tribes should have realized greater revenues from tribal natural resources, the appropriations riders should not be construed to defer the adjudication of suits alleging wrongful failure to collect and deposit such revenues.

The final words of the appropriations provisions also reinforce the conclusion that the phrase "losses to * * * trust funds" refers only to dissipation of monies that were actually contained in trust accounts. The appropriations Acts delay the running of the statute of limitations "until the affected tribe or individual Indian has been furnished with an accounting *of such funds from which the beneficiary can determine whether there has been a loss*." Given the nature of the accountings contemplated by the appropriations Acts ("of such *funds*") and mandated by the 1994 Act, however, the only "loss" that the accounting could be expected to reveal is a dissipation of funds that at one time were in a

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[11] The district court in *Cobell* v. *Norton*, No. 96-cv-1285 (D.D.C.) took a significantly broader view of the obligations entailed in the accounting for individual Indians required by the 1994 Act than did the government, and the court enjoined the government to proceed in compliance with that understanding. See *Cobell* v. *Norton*, 283 F. Supp. 2d 66, 294 (D.D.C. 2003). Finding that the injunction would cost six to twelve billion dollars to implement, see H.R. Conf. Rep. No. 330, 108th Cong., 1st Sess. 117 (2003), Congress amended the governing law, in an appropriations provision that expired on December 31, 2004, to state that the government would not be required "to commence or continue historical accounting activities with respect to the Individual Indian Money Trust" during the period that provision remained in effect. See Act of Nov. 10, 2003, Pub. L. No. 108-108, Tit. I, 117 Stat. 1263. The court of appeals vacated the injunction, stating that it would address the merits of the district court's ruling if the district court determined to reinstate its order. See *Cobell* v. *Norton*, No. 03-5314, 2004 WL 2828059, at *3-*6 (D.C. Cir. Dec. 10, 2004).

tribal trust account. The word "losses" in the earlier clause of the same sentence should be construed in a like manner.[12]

II. THIS COURT SHOULD ALSO REVIEW THE COURT OF APPEALS' ERRONEOUS HOLDING ON PREJUDGMENT INTEREST

The court of appeals also erred in holding that the Tribes could recover prejudgment interest on funds that were never made part of the relevant trust accounts in the Treasury but that respondents allege the government would have obtained if it had properly managed the Tribes' sand and gravel resources. In resolving this issue, it is critical to recognize that (1) the funds held in trust in Treasury accounts, and (2) land and other natural resources held in trust by the United States, constitute separate assets that are held in legally distinct trusts subject to different statutory schemes. The statutes applicable to funds deposited in the Treasury, including those requiring the payment of interest on such funds, govern the former type of trust.

With respect to the latter type of trust, although the United States may sometimes hold land and its associated natural resources nominally in trust for a Tribe or individual Indian, a statute or treaty creating such a passive trust imposes no duty on the United States to manage the land and resources productively for the Tribe or individual

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[12] The House Report accompanying the 1993 appropriations Act states that the relevant provision "extends the Statute of Limitations with relation to Indian trust fund management, to protect the rights of tribes and individuals until the reconciliation and audit of their accounts has been completed." H.R. Rep. No. 158, 103d Cong., 1st Sess. 57 (1993). That description suggests a focus on claims as to which the statute of limitations had not yet expired (so that the limitations period could be "extend[ed]"), and on claims concerning management of "Indian trust fund[s]" (as distinct from Indian natural resources). The House Report thus supports the government's position with respect to both contested issues concerning the interpretation of the relevant appropriations Acts.

Indian, and therefore cannot give rise to a suit for damages under the Tucker Act or Indian Tucker Act. See *United States* v. *Mitchell*, 445 U.S. 535, 540-544 (1980); *Cobell* v. *Norton*, No. 03-5314, 2004 WL 2828059, at *8 (D.C. Cir. Dec. 10, 2004). Rather, a suit for damages against the United States will lie only for violations of a particular statute requiring the government to undertake specific duties with respect to Indian land or resources, and only if that statute can fairly be interpreted to mandate compensation for a violation. See *United States* v. *Navajo Nation*, 537 U.S. 488, 503, 506 (2003). And if a Tribe or individual Indian recovers damages based on the violation of such a statute, the Tribe or individual Indian could recover interest in connection with the damages award only if an Act of Congress *expressly* provides for the payment of prejudgment interest in connection with the mismanagement claim. Here, the respondent Tribes have pointed to no Act of Congress expressly providing for the payment of interest on amounts that allegedly should have been, but were not, collected and deposited from leases of Indian lands under the Indian Mineral Leasing Act.

A. Prejudgment interest is presumptively unavailable as an element of relief against the United States. That presumption rests both on general principles of sovereign immunity (see p. 14, *supra*), and on 28 U.S.C. 2516(a), which states that "[i]nterest on a claim against the United States shall be allowed in a judgment of the United States Court of Federal Claims only under a contract or Act of Congress expressly providing for payment thereof." This Court has made clear that Section 2516(a) imposes a substantial burden on a party seeking an award of prejudgment interest against the United States:

> [T]here can be no consent by implication or by use of ambiguous language. Nor can an intent on the part of the framers of a statute or contract to permit the recovery of interest suffice where the intent is not

> translated into affirmative statutory or contractual terms. The consent necessary to waive the traditional immunity must be express, and it must be strictly construed.

Library of Congress v. *Shaw*, 478 U.S. 310, 318 (1986) (citations and internal quotation marks omitted). Similarly, in *United States* v. *Thayer-West Point Hotel Co.*, 329 U.S. 585, 588-589 (1947), the Court stated that

> [i]t is not enough that the term [in a contract] might be construed to include the payment of interest. * * * That provision must be affirmative, clear-cut, unambiguous * * *. Likewise, where a statute is relied upon to overcome the force of [the predecessor of 28 U.S.C. 2516], the intention of Congress to permit the recovery of interest must be expressly set forth in the statute.

B. The court of appeals identified no law "expressly providing" (28 U.S.C. 2516(a)) for awards of prejudgment interest in suits alleging breach by the United States of a duty to collect revenues from Indian mineral leases. Rather, the court of appeals looked to a statute, 25 U.S.C. 612, that does not govern the management of Indian *lands*, but instead governs a distinct trust consisting of *funds* in an account held in the United States Treasury. Even then, the Federal Circuit acknowledged that 25 U.S.C. 612 "does not use the express term 'pre-judgment interest,'" but the court "interpret[ed] th[at] statute as providing a substantive basis for the award of interest as part of the Tribes' damages." App. 22a. Section 612's only references to "interest" of any sort, however, are contained in the directive that "interest shall accrue on the principal fund only, at the rate of 4 per centum per annum, and shall be credited to the interest trust fund accounts established by this section." 25 U.S.C. 612. The statutory mandate that interest be earned "on the principal fund"—the corpus of the distinct monetary trust account in

the Treasury—provides no basis for requiring the government to pay interest on hypothetical receipts that might have been generated if the Tribes' natural resources had been better managed, but that in fact were never collected and deposited into any tribal trust account.

The court of appeals "also f[ou]nd merit in the Tribes' argument that the general provisions for tribal trust management and interest accrual found in 25 U.S.C. §§ 161a, 161b, and 162a mandate the payment of interest." App. 26a. As with Section 612, however, those provisions by their terms require the accrual of interest on monies that are *actually deposited* in Indian trust accounts or actually derived from Indian irrigation projects.[13] None of the statutory provisions on which the court of appeals relied refers specifically to "prejudgment interest" or contains any suggestion that the United States may be compelled to pay interest on funds that *ought to have been* collected under a distinct obligation with respect to natural resources. Indeed, as Judge Rader explained in his dissent below (see App. 30a-

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[13] See 25 U.S.C. 161a(a) ("All funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of Indian tribes shall be invested" in interest-bearing public debt securities); 25 U.S.C. 161a(b) (same for funds held in trust for individual Indians); 25 U.S.C. 161b ("All tribal funds * * * included in the fund 'Indian Money, Proceeds of Labor', shall * * * be carried on the books of the Treasury Department in separate accounts for the respective tribes, and all such funds with account balances exceeding $500 shall bear simple interest at the rate of 4 per centum per annum."); 25 U.S.C. 162a(a) (authorizing Secretary of the Interior to withdraw tribal and individual Indian trust funds from the United States Treasury and to deposit those funds in interest-bearing bank accounts); 25 U.S.C. 162a(b) (authorizing Secretary of the Interior to invest "operation and maintenance collections from Indian irrigation projects and revenue collections from power operations on Indian irrigation projects" in interest-bearing bonds, notes, or other obligations); 25 U.S.C. 162a(c) (authorizing Secretary of the Interior, upon request by a Tribe or individual Indian, to invest that beneficiary's trust fund in public debt obligations or in mutual funds).

31a), the Federal Circuit's predecessor Court of Claims previously held in its en banc decision in *Mitchell II* that the Indian plaintiffs were not entitled to the payment of interest in connection with their damage claims for mismanagement of tribal resources. And in so holding, the Court of Claims specifically rejected the contention that 25 U.S.C. 161a, 161b, and 162a supported an award of interest. See *Mitchell* v. *United States*, 664 F.2d 265, 274-275 (1981), aff'd on other grounds, 463 U.S. 206 (1983).

C. In holding that the Tribes were entitled to prejudgment interest on funds that had never entered their trust accounts, the court of appeals relied substantially on this Court's decision in *Peoria Tribe*. See App. 25a-26a. In that case the Court construed a treaty between the United States and the Peoria Tribe that (a) required the government to sell a particular tract of land at public auction for the Tribe's benefit and (b) directed that any portion of the receipts not immediately paid to the Tribe "shall be invested in safe and profitable stocks, the interest to be annually paid to [the Tribe]." *Peoria Tribe*, 390 U.S. at 469 (quoting Treaty of May 30, 1854, Art. 7, 10 Stat. 1082). The United States sold the land at private sales rather than at public auction as the treaty required; and the Indian Claims Commission found that the government "received for the lands $172,726 less than it would have received if the sales had been made as required by the treaty." *Id.* at 470. This Court held that the United States was liable in damages not only for that amount, but also for the income that the $172,726 would have produced if that sum had been invested as the treaty required. *Id.* at 471-473. The instant case is distinguishable from *Peoria Tribe* in three crucial respects.

1. The court of appeals erred in concluding that the United States was subject to a legal duty, comparable to the treaty obligation to conduct public auction sales in *Peoria Tribe*, to collect funds owed the Tribes from the sale of their

natural resources. As this Court recognized in *Navajo Nation*, IMLA serves "to foster tribal self-determination by giving Indians a greater say in the use and disposition of the resources found on Indian lands." 537 U.S. at 494 (citation, brackets, and internal quotation marks omitted). That "greater say" includes the power to direct that lease payments will be made to the Indian mineral owner or to another designated recipient. See 25 C.F.R. 211.40 ("Unless otherwise specifically provided for in a lease, once production has been established, all payments shall be made to the MMS [Mineral Management Service] or such other party as may be designated."). Moreover, even where payments under a lease are to be made to MMS, Section 211.40 directs the lessee to make the payments, but it does not impose specific duties on MMS with respect to their collection. Absent a duty on the part of the government to collect payments owed on tribal mineral leases, the predicate for the interest award in *Peoria Tribe* is lacking in this case.[14]

2. In *Peoria Tribe*, the government's obligation to sell land at public auction and its duty to pay interest on the proceeds of the auction sale both arose from the same source of law—the treaty between the Peoria Tribe and the United States. See 390 U.S. at 469. In determining "the measure of

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[14] The court of appeals erred in suggesting (App. 22a-23a, 28a) that 25 U.S.C. 612 requires the government to collect lease payments on behalf of the respondent Tribes. Section 612 states "[t]hat all future revenues and receipts derived from the Wind River Reservation under any and all laws, * * * shall be * * * credited to the principal trust fund accounts established herein." 25 U.S.C. 612. Section 612 thus requires that all funds actually received by the United States Treasury must be credited to specified accounts, but it does not obligate the government to collect funds for the Tribes. The court of appeals also suggested that Interior Department "regulations in 30 C.F.R., Subchapters A and D" imposed such a duty on the United States. App. 20a. No such duty is mentioned in 30 C.F.R. Ch. II, Subch. A, which concerns the operations of the Mineral Management Service; and there is no Subchapter D within that Chapter.

damages for the treaty's violation in the light of the Government's obligations under that treaty," *id.* at 471, the Court treated those treaty provisions as part of a unified whole. In the instant case, by contrast, even if IMLA imposed a duty on the United States to collect lease payments for the Tribes' sand and gravel resources, nothing in that statute mandates the payment of interest on the money collected, or provides for the payment of prejudgment interest in connection with an award of money damages for a violation of that duty.

The court of appeals sought to fill that gap by relying on 25 U.S.C. 612. As explained above, however, that statute spells out the government's duties with respect to a legally distinct trust consisting of the accounts in the Treasury for the benefit of the Tribes, not with respect to the management of Indian lands and natural resources. And the only obligation with respect to the payment of interest imposed by 25 U.S.C. 612 and other statutes (25 U.S.C. 161a, 161b, and 162a) is the direction to the government to place the funds that are actually held in trust for Indians in interest-bearing accounts. For the foregoing reasons, an award of interest on funds that were not collected under a lease—and therefore were never deposited into the Treasury—would be *in addition to*, rather than a part of, the Tribes' damages for any breach of the government's alleged duty under the IMLA or its implementing regulations to collect revenues that may have been committed in this case.

3. In *Peoria Tribe*, this Court stated that, under applicable canons of construction, Indian treaties must "be construed, so far as possible, in the sense in which the Indians understood them, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people." 390 U.S. at 472-473 (internal quotation marks omitted); accord, *e.g.*, *Washington* v. *Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S.

658, 675 (1979). The instant case, by contrast, involves the interpretation not of a treaty but of federal *statutes*, which must be construed so as to give effect to the intent of Congress. See *United States* v. *First National Bank*, 234 U.S. 245, 259 (1914) (holding that Indian treaties must be interpreted to conform to the Indians' understanding of their terms, while statutes are not subject to the same canon of construction). There is consequently no countervailing rule of interpretation in this case that could justify an award of prejudgment interest against the United States in the absence of express statutory language authorizing that form of relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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JANUARY 2005